IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

WP(C).No. 3980 of 2007(W)

PETITIONER:

B. HAIMAVATHY
MANAGER (RTD)
DEPT. OF TOURISM, GOVT. OF KERALA
THIRUVANANTHAPURAM
RESIDING AT 'PREETHI'
MANVILA, KULATHOOR (P.O)
THIRUVANANTHAPURAM

BY ADV. SRI.GOPAKUMAR R.THALIYAL
SRI.N.P.PRAJEESH

RESPONDENTS:
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1. THE DIRECTOR
DEPT. OF TOURISM, PARK VIEW
THIRUVANANTHAPURAM

2. STATE OF KERALA, REP. BY THE SECRETARY TO GOVT.
DEPT. OF TOURISM, GOVT. SECRETARIAT
THIRUVANANTHAPURAM

3. THE ACCOUNTANT GENERAL (A& E)
OFFICE OF THE ACCOUNTANT GENERAL
THIRUVANANTHAPURAM

BY GOVT. PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 3980 OF 2007

Dated this the 6th February, 2007.

JUDGMENT

The petitioner filed a complaint before the Lok Ayukta for an order directing the respondents to sanction and disburse DCRG as determined by the Accountant General. Before the Lok Ayukta the respondents took up the contention that the liability certificate quantifying the same as Rs.89,523/- had been issued and the petitioner is entitled to receive gratuity less the liability thus fixed. Contentions were taken up before the Lok Ayukta to establish that the liability certificate issued was not in accordance with law, and therefore, the entire DCRG ought to have been disbursed. The Lok Ayukta considered the contentions raised against the fixation of liability and took note of each and every item of liability and found that the petitioner was afforded due opportunity to file objections against the determination of liability, the departmental authorities had considered the objections and thereafter only the liability was fixed. The Lok Ayukta also found that such proceedings for fixation of liability commenced before the retirement of the petitioner from service and the quantification of liability was finally done in some cases before the retirement of the petitioner

and in certain other cases within one year from the date of retirement of the petitioner. Accordingly, the Lok Ayukta came to the conclusion that the departmental head had acted in strict compliance of the provisions of Part III of K.S.R and therefore, the contentions raised by the petitioner were liable to be rejected. In the result the complaint filed by the petitioner before the Lok Ayukta was dismissed.

2. The petitioner has filed this writ petition seeking for an order quashing Exts.P2 to P5, P7, P10, P12, P13, P15, P17, P19 and P20 as arbitrary. Among them, Ext.P4 is the order of the Lok Ayukta. It is unnecessary for this Court to consider the validity of each and every order sought to be quashed because the Lok Ayukta had considered the validity of those orders while passing Ext.P4 order. If Ext.P4 order stands the test of law, then nothing further is necessary at the hands of this Court. Hence, the only question is whether Ext.P4 order passed by the Lok Ayukta is liable to be interfered with by this Court under Art.226 of the Constitution of India.

3. Counsel for the petitioner submits that the respondents did not consider properly the objections raised by him against the fixation of liability. Such a contention ought to have been taken by the petitioner

before the Lok Ayukta if she wanted the Lok Ayukta to address itself to that contention. Though counsel for the petitioner submitted that such a contention was, in fact, taken before the Lok Ayukta, it failed to consider those contentions. I am not able to accept the above argument. I am of the opinion that had the relevant contention been taken and actually raised for the consideration of the Lok Ayukta, it will certainly advert to that contention. On a perusal of the order passed by the Lok Ayukta as per Ext.P4 it does not appear that the aforesaid contention was raised before the Lok Ayukta. To a query put by me, learned counsel submits that the papers relating to the objections were not produced before the Lok Ayukta. That shows that Lok Ayukta had no opportunity to look into the above contention which is said to have been urged.

4. In a case where the petitioner had approached the Lok Ayukta for the very same relief and has courted a verdict against her from that Forum, it is not proper for the petitioner to raise contentions in this writ petition, which were not raised before the Lok Ayukta, and seek for orders under Art.226 of the Constitution of India. Going through Ext.P4 order passed by the Lok Ayukta which has dealt with the contentions urged before it, I do not find any error that warrants the interference of this Court.

This writ petition is liable to be dismissed. I do so.

K.K.DENESAN
Judge

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